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December 22, 2016

Jeff S. Jordan, Esq.
Office of the General Counsel
Federal Election Commission
Attn: Donna Rawls, Paralegal
999 E Street, NW
Washington, DC 20463

Re: MUR 7157

Dear Mr. Jordan:

As counsel to Democracy Partners, we write in response to the complaint filed by Project Veritas Action Fund and James O'Keefe. The Complaint was triggered by hidden camera videos from an organization known for illegally recording "sting" operations and selectively editing videos to present a false impressions to the viewers.¹ The Complaint fails to set forth sufficient facts which, even if proven true, would constitute a violation of the Federal Election Campaign Act of 1971, as amended ("the Act"). Accordingly, the Commission should find that there is no reason to believe that the Respondents violated the Act or Commission regulations, and promptly close this matter. Furthermore, it is completely inappropriate to name vendors as Respondents in this matter therefore the Complaint should be immediately dismissed.

Factual Background and Legal Analysis

1. Democracy Partners

Democracy Partners is a political consulting firm composed of the leading experts in political messaging, campaign planning and other political management services. The partners have their own firms and companies, and Democracy Partners acts as a central apparatus but not as a profit center for the partners. Mobilize is a C-Corporation registered in Illinois and formed in 2007. In June 2016, Mobilize contracted with the Democratic National Committee ("DNC") to coordinate events and actions. The contract called for the engagement of at least five additional consultants to add bandwidth to the project. Scott Foval was engaged as a sub-contractor in June of 2016. The contracted activities did not involve public communications therefore Democracy Partners, as a vendor, was never asked to be independent.

¹ See Scott Baker, *Does Raw Video of NPR Expose Reveal Questionable Editing & Tactics*, The Blaze (March 10, 2011), <http://www.theblaze.com/stories/2011/03/10/does-raw-video-of-npr-expose-reveal-questionable-editing-tactics/>.

2. Allegations Based on the Project Veritas Videos Cannot be Taken as True.

In October 2016, Democracy Partners learned that it was targeted by Project Veritas. The undercover operation involved the use of trained operatives using false identifications, disguises, and false covers to infiltrate Democracy Partners and other groups. It goaded people into making careless statements on hidden cameras over a seven month period of time.² Project Veritas is well known for these undercover operations and for its selective editing and manipulation of videos and has been widely condemned.³ The Blaze, which was founded by Glenn Beck, examined the footage from Project Veritas' attack on NPR. Its examination compared the raw video to the edited video distributed by Project Veritas and showed how detrimental selective editing can be to facts. The Blaze concluded: "Perspective and context are essential elements in bringing truth to the forefront. To exclude or alter them can obscure truths rather than reveal them."⁴ Here, the selective editing and manipulation completely twisted the facts and took comments out of context. For example, the videos were edited to make it appear as though targets were encouraging illegal voting yet the entire transcripts would have shown that targets made clear that voting twice and creating fraudulent identification were illegal.⁵ James O'Keefe even pled guilty for entering property belonging to the United States under false pretenses during an undercover sting of Senator Mary Landrieu's office.⁶

Project Veritas recorded conversations with Mr. Foval on an ongoing basis beginning in April of 2016. Mr. Foval was not hired by Democracy Partners until June. While the Complaint claims that the transcripts cited are from conversations with Mr. Foval in September, Project Veritas' long history of manipulation and editing make that claim impossible to verify. It is clear that the "videos are edited in ways that the context of the conversation or the meaning of the statement isn't always clear, nor do you know when they took place."⁷ Accordingly, the allegations made in the Complaint, which are based entirely on the Project Veritas edited videos, cannot be taken as true.

3. Allegations Based on Statements Made by Scott Foval Have No Credibility.

The videos underlying the allegations in the Complaint arise from conversations with Scott Foval, a short-term contractor. His statements contain factual inaccuracies, puffery and bragging. These factual inaccuracies have been well documented. For example, Mr. Foval

² David Weigel, *Two Democratic operatives lose jobs after James O'Keefe sting*, Washington Post (Oct. 19, 2016), https://www.washingtonpost.com/news/post-politics/wp/2016/10/19/two-democratic-operatives-lose-jobs-after-james-o-keefe-sting/?utm_term=.bda6e869b0c1.

³ See e.g. Scott Keyes, *The Real Fraud: Second 'Non-Citizen' In James O'Keefe Voter Fraud Video Naturalized in 2011*, Think Progress (May 16, 2012), <https://thinkprogress.org/the-real-fraud-second-non-citizen-in-james-o-keefe-voter-fraud-video-naturalized-in-2011-728fdc165943#.e80gqlby9>;

⁴ Scott Baker, *Does Raw Video of NPR Expose Reveal Questionable Editing & Tactics*, The Blaze (March 10, 2011), <http://www.theblaze.com/stories/2011/03/10/does-raw-video-of-npr-expose-reveal-questionable-editing-tactics/>

⁵ David Weigel, *Two Democratic operatives lose jobs after James O'Keefe sting*, Washington Post (Oct. 19, 2016), https://www.washingtonpost.com/news/post-politics/wp/2016/10/19/two-democratic-operatives-lose-jobs-after-james-o-keefe-sting/?utm_term=.bda6e869b0c1.

⁶ Ramon Vargas, *James O'Keefe and friends plead guilty in Mary Landrieu office caper*, The Times Picayune (May 26, 2010), http://www.nola.com/crime/index.ssf/2010/05/james_okeefe_and_friends_plead.html.

⁷ Steve Contorno, *Trump says Clinton and Obama paid people to cause violence at his rallies*, Politifact (Oct. 20, 2016), <http://www.politifact.com/truth-o-meter/article/2016/oct/20/trump-says-clinton-and-obama-caused-violence-his-r/>.

claimed that he had trained a 68 year-old woman who was knocked to the ground during a confrontation at a Trump rally in North Carolina. In an interview with the New York Times, the woman said she attended the rally on her own accord and had not received any protest training.⁸ Mr. Foval also implied that he had trained an organized protests at a Trump event in Chicago. One of the highest profile protesters said he did it for free and no one asked him to do it.⁹ Further, the Chicago protest occurred in March but Mr. Foval was not hired until June.¹⁰ Mr. Foval's statements cannot be given any credibility.

4. Even if the Allegations Made in the Complaint are True, Democracy Partners Did Not Violate the Act.

Even if the statements from the Project Veritas videos are taken as true, the Complaint fails to allege specific facts to demonstrate that Respondents engaged in impermissible coordination. First, Democracy Partners was a vendor. We are aware of no matter where a vendor has been held liable for violating any campaign finance law where it was a common vendor. Therefore, it is completely inappropriate to name Democracy Partners as a Respondent and find that it violated the law. Second, the Complaint fails to connect any discussion to actual coordination. The Complaint cites ambiguous statements of political activity by different groups and "calls to Brooklyn" as mere speculation. The Commission has held that there must be more than just "mere speculation" to assert a violation of the Act.¹¹

Democracy Partners' activities were not public communications therefore the Act does not prohibit coordinating its activities. A communication is coordinated when it satisfies one of the content standards, satisfies one of the conduct standards and is paid for by a person other than the candidate, authorized committee or political party.¹² The content prong is met if the communication is an "electioneering communication"¹³ or if it is a "public communication."¹⁴ The Complaint does not allege or identify any communication that would qualify as an electioneering communication and the activities cited in the Complaint are not public communications under the Act. For an activity to be a "public communication," a communication must be made "by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public or any other form of general public political advertising."¹⁵ The Donald Duck and protest activities involved individuals dressing as ducks or holding signs at protests. The Commission has never found that this type of activity could possibly fall under the catchall of

⁸ Steve Eder and Jonathan Martin, *Videos Put Democrats on Defensive About Dirty Tricks*, New York Times (Oct. 20, 2016), http://www.nytimes.com/2016/10/21/us/politics/video-dnc-trump-rallies.html?_r=1.

⁹ Sam Cholke, *Chicago Protesters to Trump: We Shut Down Your Rally for Free*, DNAinfo (Oct. 20, 2016), <https://www.dnainfo.com/chicago/20161020/university-village/trump-rally-chicago-paid-protesters-hillary-clinton>.

¹⁰ Steve Contorno, *Trump says Clinton and Obama paid people to cause violence at his rallies*, Politifact (Oct. 20, 2016), <http://www.politifact.com/truth-o-meter/article/2016/oct/20/trump-says-clinton-and-obama-caused-violence-his-r/>.

¹¹ MUR 5754 (MoveOn.org Voter Fund) (finding no reason to believe a violation occurred because the allegations in the complaint did not connect to any discussion to the alleged coordinated communications).

¹² MUR 6722 (House Majority PAC), General Counsel's Report at 3 (Aug. 6, 2013) (citing 11 C.F.R. § 109.21).

¹³ *Id.* at 4 (citing 11 C.F.R. §§ 109.21(c)(1), 100.29 (a), (b)(1)).

¹⁴ *Id.* (citing 11 C.F.R. 4 109.21(c)(2)-(5)).

¹⁵ 52 U.S.C. § 30101(22).

"general public political advertising" to be a public communication. Therefore, because the content prong is not met, Democracy Partners did not engage in coordinated activity.

Conclusion

The Complaint's allegations are based on factual inaccuracies, puffery and bragging made by a short-term contractor that Democracy Partners employed, who was baited throughout his conversations and interactions with Project Veritas. These falsehoods were manipulated by Project Veritas' selective video editing and further selectively excerpted in this complaint. Furthermore, the allegations that Democracy Partners illegally coordinated with the DNC and other groups is nonsensical because Democracy Partners was a paid vendor. It was never asked by its clients to be independent because none of its activities involved public communications, thus, the content prong is not met. Accordingly, the Commission should find that there is no reason to believe that the Respondents violated the Act or Commission rules, and promptly close this matter. Furthermore, it is completely inappropriate to name vendors as Respondents in this matter therefore the Complaint should be immediately dismissed.

Sincerely,



**Neil Reiff
Dara Lindenbaum
Counsel to Democracy Partners**